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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 395/2004

APPELLANT Munnalal Kosle
APPLICANT

VERSUS

RESPONDENTS : Pankaj Singh & two others.
NON-APPLICANTS

POST FOR JUDGMENT ON 01-05-2007

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 395/2004

APPELLANT
APPLICANT

Munnalal Kosle, son of Shri Jhumuklal Kosle, aged about 43 years, service, resident of village Gajiya Nawagaon, Police Station and Tah Mungeli, District Bilaspur (C.G.)

VERSUS

RESPONDENTS
NON-APPLICANTS :

1. Pankaj Singh, S/o. Shri Dhal Singh, aged about 47 years, R/o. Padav Chowk Mungeli, near Ware House, P.S. and Tah. Mungeli, Distt. Bilaspur (OWNER OF THE TATA SUMO NO. MP26E/A-2131)

2. Rakesh Kumar alias Baba, son of Chhotelal Singh Thakur, aged about 40 years, resident of Mungeli, Waster Reservoir Tank, Tah and P.S. Mungeli, Distt. Bilaspur (C.G.) DRIVER OF TATA SUMO NO. MP26E A2131 INVOLVED IN ACCIDENT)

3. Branch Manager, United India Insurance Company Limited, Branch Office, Rajendra Nagar Chowk, Bilaspur (C.G.) (INSURER OF THE VEHICLE)

Present: Mr. Manoj Chouhan, counsel for the appellant.
Mr. Dashrath Gupta, counsel for the respondents No. 3/Insurance Company.

J U D G M E N T
(Delivered on 01/05/2007)

Dhirendra Mishra, J

The appellant has preferred this appeal for enhancement of award dated 29.12.2003 passed by learned III Additional Motor Accident Claims Tribunal (FTC) Mungeli in claim case No.12/2002, whereby learned Tribunal has awarded a sum of Rs.8,000/- only with interest at the rate of 9% per annum from the date of application to the claimant for the injuries sustained by him on 4.2.2002 when Tata Sumo jeep owned by respondent No.1, driven by respondent No.2 and insured by respondent No.3, dashed against a tree and overturned.

2. Grievance of the appellant is that the learned Tribunal has not awarded compensation for the period from 4.2.2002 to 25.5.2002 when he was compelled to be on leave due to the injuries sustained by him in the accident.

3. Reliance is placed on the judgments in the matter of **Udayram Vs. Mohd. Usman and others** reported in **1991 Manisa 61 (M.P.)** and in the matter of **Himanchal Road Transport Corporation and another Vs. Ganeshwar Sharma and another** reported in **2002(1) Accident Claim Case. 217**.

4. The appellant has also assailed the finding of the Tribunal by which the Tribunal has exonerated the respondent No.3/Insurance Company from the liability of satisfying the award on the ground that the vehicle was registered and insured for private purposes, however, at the time of accident number of passengers were traveling in the said vehicle in breach of insurance policy conditions.

5. On the other hand, learned counsel for the respondent No. 3/Insurance Company, has supported the impugned award and submitted that from the medical and oral evidence available on record it is evident that the appellant did not suffer any grievous injuries. There is no evidence on record to show that the appellant remained on leave from 4.2.2002 to 25.5.2002 on account of the injuries sustained by him. The finding of the learned Tribunal that the appellant was not deprived of any wages for the above period as he was a government employee and was entitled for leave, which is admitted by the appellant according to paragraph 13 of his statement, is justified and based on the evidence on record. However, with respect to the second ground of the appeal that insurance company has been illegally exonerated by the impugned award, it is submitted that from the evidence available on record it is evident that at the time of accident, number of passengers were traveling in the vehicle in question, on investigation by the insurance company it was revealed that the jeep was being used as a taxi for carrying passengers after charging fare and as such, the vehicle was being used in breach of insurance policy conditions.

6. I have heard learned counsel for the parties and perused the material available on record including the impugned award.

7. It is not in dispute that the appellant was Rural Agriculture Extension officer in the agriculture department. It is also true that except the statement on oath of the appellant that he was on leave from 4.2.2002 to 25.5.2002 on account of injuries sustained by him in the accident, there is no documentary evidence adduced by the appellant/claimant that he applied for leave for the above period on medical ground and the same was sanctioned by his employer and thus, he remained on leave for the said period. The Tribunal has negated the claim of the appellant on this head with a finding that he has still 17-18 years to serve as a government servant and in these circumstances, it would not be just and appropriate to compensate the claimant for the losses towards leave taken by him from the government job.

8. In the matter of Himanchal Road Transport Corporation (supra) considering the compensation towards loss of leave, it has been held that the claimant is entitled for compensation for the loss of eight months as the claimant would have taken his leave at his pleasure and could have encahsed his leave at the time of retirement, had he not met with accident.

9. In the matter of Udayram Vs. Mohd. Usman and others (supra) similar law has been laid down by the High Court of M.P. that the injured should be compensated for the period for which he had to take leave from his duty on account of injuries as leave is encashable.

10. In the instant case, as already pointed out in the foregoing paragraphs, the appellant has not produced any documentary evidence to show that he remained on leave because of injuries sustained by him on medical ground and as such, he has failed to prove this fact by adducing best evidence in his possession. However, considering the fact that the appellant sustained bodily injuries and was referred to District Hospital, Bilaspur and

thereafter, he remained on leave, ends of justice would be served if a further sum of Rs.12,000/- is awarded as additional compensation to the appellant under the above head.

11. So far as the finding of the Tribunal exonerating the respondent No.3/insurance company from the liability of satisfying the award is concerned, in the connected matters i.e. M.A.No. 442/2004 & M.A.No. 420/2004 arising out of the same accident, it has already been held by this Court that the vehicle in question, which has the capacity of nine passengers, was insured with respondent No.3 and as per policy conditions, the insurance company has undertaken to indemnify the insured towards liability to third parties including the occupants of the vehicle. From the evidence available on record of the present appeal also, the claimant has denied that he paid any amount towards fare and therefore, it cannot be said that the vehicle was being used by the owner for hire requirements. The finding of the Tribunal that the vehicle was registered as a private vehicle and insured for private purposes whereas the same was being used as a taxi and fare was charged from the passengers including the claimant, is not borne out from the evidence available on record.

12. In the result, the appeal stands allowed. Impugned award is modified to the extent that instead of Rs.8,000/- the appellant/claimant is entitled to receive a total sum of Rs.20,000/ with interest at the rate of 9% per annum from the date of application, which shall be payable by non-applicants No. 1 to 3 jointly and severally to the appellant/claimant.

Sd/-
Dhirendra Mishra
Judge